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C O N F I D E N T I A L SECTION 01 OF 02 TASHKENT 000268

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TAGS: [PGOV](#) [PREL](#) [MARR](#) [UZ](#)

SUBJECT: Discussion With Uzbek FM on Afghanistan Transit: Defining Terms

REF: a) DESK-EMBASSY TASHKENT E-MAIL OF 3/11/09
b) UZBEK MFA DIP NOTE 05/6045

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CLASSIFIED BY: Nicholas Berliner, Pol-Econ Chief; REASON: 1.4(B), (D)

[11.](#) (U) This message contains a request for guidance at paragraph 8.

[12.](#) (C) Summary: Talks with the Government of Uzbekistan (GOU) on the exchange of letters for the transit of non-lethal cargo to Afghanistan have come very close to success, but we are not there yet. Politically, the GOU is committed to facilitating transit, a position that President Karimov made clear to General Petraeus and that he reiterated publicly in late February. The principal obstacle to concluding an agreement relates to Uzbek concerns that private shipping companies (and therefore the USG) be accountable for compliance with Uzbek laws and regulations. The Ambassador met with Uzbek Foreign Minister Norov on March 11 to clarify the U.S. position and seek a better understanding of Uzbek concerns on this point. Although this is an important issue for the GOU, Norov pointed to what may be a differing interpretation of the meaning of the text that could be clarified through careful redaction. What was abundantly clear from the meeting was that the Uzbeks consider this to be a binding agreement, at least in the political sense of that term. It is Post's considered judgment that any effort to characterize the agreement as a whole as "non-binding" will be rejected by the Uzbeks and would erode the trust that is essential in order to win their cooperation on transit. End Summary.

Uzbek FM Says Transit Arrangement More Political Than Legal

[13.](#) (C) Seeking to clarify the U.S. position on the question, the Ambassador met for over an hour with Uzbek Foreign Minister Vladimir Norov on March 11 to discuss the way forward. The Ambassador explained to Norov that the USG cannot assume legal liability on behalf of a third party and that, for this reason, it is impossible to accept the language the Uzbek side has proposed. Norov said that the GOU does not interpret the language in paragraph 5 of the draft to be legally binding on the USG as it is written in its Russian version. He said that the language in paragraph 5, from the Uzbek perspective, means that the USG will take it upon itself to make sure through contracts, inspections or other measures that the contractors it hires will comply with Uzbek laws and regulations, the provisions of which he said are laid out previously in paragraph 4 of the draft text.

[14.](#) (C) Norov added that the Uzbek concern is that, while it will have visibility into contracts concluded between the shipping companies and local Uzbek handlers or forwarders, it has no visibility into the contracts that the USG concludes with commercial shippers. He said that, since the GOU has no contract with these shipping companies, its only recourse in the case of a violation of the terms and conditions of the agreement (he mentioned the lading of non-approved lethal cargo in this context) is with the USG. He emphasized, however, that this recourse was political, as there was no legal consequence of non-compliance since no court would have jurisdiction over a political agreement.

Lost in Translation

[15.](#) (C) Norov returned repeatedly to the interpretation of the Russian verb "obespechivat" which he said implied a commitment that is short of legally binding, but which for the Uzbeks is the operative word in paragraph 5. "Obespechivat" can have a number of different meanings in Russian, among which are "secure," "guarantee," "ensure," "furnish" or "make provision for." Although in the strictest sense, "obespechivat" does imply a guarantee, there could be room for a more liberal translation of this term in English so that the text would read, "When conducting transit of goods, the American Participant and the expediting company WILL MAKE PROVISION FOR compliance with the requirements of the

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Agreement of International Good Transport by Rail (AIGTR), legislation of the Republic of Uzbekistan as well as other normative acts applied to the Uzbek railways and roads, including the sanitary-epidemiologic standards of the Republic of Uzbekistan." Such a formulation in English would retain its current construction in Russian. Accepting as Norov said that

there is no legal mechanism for enforcement of the exchange of letters between the USG and the GOU, this would underscore the "non-binding" political nature of this text without explicitly saying as much.

¶6. (C) Based on Norov's stated concern that the text make provision for compliance with Uzbek laws and regulations and that it is the responsibility of the USG to ensure such compliance, the Ambassador suggested additional language to clarify this issue. This language would read along the lines of, "When conducting transit of goods, the expediting company is to comply with the requirements of the Agreement of International Good Transport by Rail (AIGTR), legislation of the Republic of Uzbekistan as well as other normative acts applied to the Uzbek railways and roads, including the sanitary-epidemiologic standards of the Republic of Uzbekistan. THE AMERICAN PARTICIPANT UNDERTAKES TO RESPECT THE LAWS OF THE REPUBLIC OF UZBEKISTAN IN ALL ASPECTS RELATING TO THE TRANSIT OF GOODS UNDER THIS AGREEMENT AND, IN ACCORDANCE WITH U.S. LAW, TO MONITOR THE EXPEDITING COMPANY'S COMPLIANCE WITH THE PROVISIONS OF THIS PARAGRAPH."

Non-Binding is a Non-Starter

¶7. (C) We do not know if the GOU will accept either of these formulations, but believe that there is still room for language that will respect our red lines and, at the same time, give the Uzbeks the assurances they seek. However, we do not believe that the GOU will accept characterization of the overall agreement (or paragraph 5) as non-binding, despite Norov's statement to the effect that it is largely political. Compliance with their law is a key point for the Uzbeks, who remain distrustful of the U.S. Saying to the Uzbeks that we consider this text to be non-binding would be tantamount to telling them that we will comply with their laws and regulations at our own discretion. (In this regard, Norov is well aware of the significance of "binding" versus "non-binding" agreements, as we emphasized to him the importance to us of securing a "binding" exchange of letters last summer on the issue of international religious freedom.) Uzbekistan may be a country where the rule of law is weak, but the post-Soviet mindset of its bureaucracy is highly legalistic. In this context, Norov's characterization of this exchange of letters as largely political is accurate. When Karimov stated publicly that Uzbekistan had agreed to transit, he also added "an agreement was reached ... on the condition of strict compliance with the laws of the Republic of Uzbekistan." Neither Norov nor anyone else in the GOU will have authority to agree to anything short of the terms Karimov set.

RFG on Way Forward

¶8. (C) The meeting with Norov concluded with the Uzbeks requesting input from Washington on possible compromise text, which Norov told the Ambassador he hoped could be done "soon." Post requests Washington's guidance on the suggestions in paragraphs 5 and 6 above.

NORLAND

To view the entire SMART message, go to URL http://repository.state.sgov.gov/_layouts/OSS/SearchResults.aspx?k=messageid:e2cbd55c-e2f2-45bc-ba